



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	04/02/13	Bill No:	Assembly Bill 431
Tax Program:	Transactions and Use	Author:	Mullin
Sponsor:	See Comment 1	Code Sections:	GC 65087, 65087.1, & 65087.2
Related Bills:	AB 210 (Wieckowski) SB 1 (Steinberg)	Effective Date:	01/01/14

This analysis only addresses the provisions that impact the BOE.

BILL SUMMARY

Among other things, this bill authorizes a transportation planning agency that is designated as a metropolitan planning organization to impose a transactions and use tax (district tax) at a rate of no more than 0.5% within all or a specified portion of its jurisdiction.

ANALYSIS

CURRENT LAW

The State Board of Equalization (BOE) administers locally-imposed sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law. By law, cities and counties (and special purpose entities) contract with the BOE to perform all functions in the administration and operation of the ordinances imposing the local and district taxes.

The **Bradley-Burns Uniform Local Sales and Use Tax Law**¹ authorizes cities and counties to impose a local sales and use tax. This rate of tax is fixed at 1% of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Of this 1%, cities and counties use 0.75% to support general operations. The remaining 0.25% is designated by statute for county transportation purposes, but restricted for road maintenance or the operation of transit systems. The counties receive the 0.25% tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. Currently, all cities and counties in California impose the Bradley-Burns local taxes at the uniform rate of 1%.

The **Transactions and Use Tax Law**² and the **Additional Local Taxes Law**³ authorize cities and counties (and special purpose entities) to impose district taxes under specified conditions. Counties are authorized to impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the required percentage of county voters approve the ordinance imposing the tax. Cities also are authorized to impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the city. The combined district tax rate

¹ Part 1.5 of Division 2 of the Revenue and Taxation Code (RTC), commencing with Section 7200.

² Part 1.6 of Division 2 of the RTC, commencing with Section 7251.

³ Part 1.7 of Division 2 of the RTC, commencing Section 7280.

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imposed within any local jurisdiction cannot exceed 2%⁴ (with the exception of Los Angeles County⁵).

Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code (PUC). Various statutes under the PUC authorize a county board of supervisors to create an authority within the county or designate a transportation-planning agency to impose a district tax, subject to the applicable voter approval requirement. District taxes imposed under the PUC must conform to the administrative provisions contained in the Transactions and Use Tax Law, including the requirement to contract with the BOE to perform all functions related to the administration and operation of the ordinance.

In addition, counties can also establish a county regional justice facilities financing agency to impose district taxes under the Government Code (GC). Various statutes under the GC authorize a county board of supervisors to establish an agency within the county to impose a district tax, subject to the applicable voter approval requirement. These district taxes must also conform to the administrative provisions contained in the Transactions and Use Tax Law.

Currently, all district tax ordinances administered by the BOE have boundaries coterminous with city or county lines.

PROPOSED LAW

Among other things, this bill:

- authorizes a transportation planning agency that is designated as a metropolitan planning organization (MPO) pursuant to Section 134 of Title 23, to impose a district tax up to 0.5% within all or a portion of its jurisdiction;
- provides that the district tax may exceed the existing 2% rate limitation;
- requires the district tax to conform to the Transactions and Use Tax Law;
- permits a transportation planning agency that includes a territory of more than one county, or portions of a county, to exclude one or more counties from the district tax ordinance;
- requires the district tax ordinance to contain an expenditure plan which provides funding for transportation, affordable housing, as well as parks and open space in conformity with the region's sustainable communities strategy (SCS);
- mandates that at least 25% of available net revenues be allocated to each of the above-listed categories;
- requires any remaining net available revenues to be spent to help attain the goals of the SCS, as determined by the transportation planning agency.

The bill would become effective on January 1, 2014.

⁴ RTC Section 7251.1.

⁵In 2003, SB 314 (Chapter 785, Murray) authorized the Los Angeles Metropolitan Transportation Authority to impose a 0.50% district tax for specific transportation projects, and excluded that 0.50% tax from the 2% combined rate limitation established by RTC 7251.1. In 2008, voters within Los Angeles County approved the additional 0.50% effective July 1, 2009, which raised the tax rate in the cities of South Gate and Pico Rivera 10%. Effective April 1, 2013, the tax rate in the City of La Mirada (in Los Angeles County) also will be 10%.

IN GENERAL – DISTRICT TAXES

District transactions (sales) taxes are imposed on the sale of tangible personal property in a district. If a retailer is located in a district, his or her sales are generally subject to district sales tax, either when the purchaser acquires the property at the retailer's place of business or when the retailer delivers the property to the purchaser in the district. Retailers located within a district selling and delivering outside the district, generally are not liable for district sales tax in their district.

District use tax is imposed on the storage, use, or other consumption of tangible personal property in a district. Retailers generally must report district use tax if they are "engaged in business" within a district. Retailers are considered "engaged in business" in a district if one of the following conditions applies:

- The retailer maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any type of office, sales room, warehouse, or other place of business in the district.
- The retailer has any kind of representative operating in the district for the purposes of making sales or deliveries, installing or assembling tangible personal property, or taking orders.
- The retailer receives rentals from a lease of tangible personal property located in the district.
- The retailer is a retailer of vehicles or undocumented vessels that will be registered, or aircraft that will be licensed, in a district.

A retailer "engaged in business" in a district generally is required to collect and report district use tax on a sale when it ships or delivers the property or participates in the sale of the property within the district. The following example illustrates when retailers should collect and report district use tax:

A retailer in Sacramento County makes a taxable sale of property that is delivered to the purchaser in the City of Concord in Contra Costa County who will use the property there. Even though the sale is subject to the state sales tax, the sale would be exempt from Sacramento County district sales tax because the property was required to be delivered pursuant to the contract of sale outside the county. However, use of the property in Concord makes the sale subject to the applicable district use taxes in Concord and Contra Costa County. If the retailer is "engaged in business" in Concord and delivers the property to the Concord location, he or she is responsible for collecting and reporting district use taxes applicable in the City of Concord and in Contra Costa County. Conversely, if the retailer is not engaged in business anywhere in Contra Costa County, the retailer is not responsible for collecting any district use tax.

DISTRICT TAXES CURRENTLY ADMINISTERED BY THE BOE

Currently, all district taxes are levied exclusively within the borders of either a county or an incorporated city (with the exception of the Bay Area Rapid Transit District, which is comprised of Alameda, Contra Costa, and San Francisco counties, and the Sonoma-Marín Area Rail Transit District).

As of April 1, 2013, there are 169 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 169 jurisdictions, 43 are county-imposed taxes and 126 are city-imposed taxes.

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The maximum combined rate of all district taxes imposed in any county cannot exceed 2% (with the exception of Los Angeles County). The city district taxes count against the 2% maximum. District taxes increase the tax rate within a city or county because the district tax rate is added to the combined state and local (Bradley-Burns) tax rate of 7.5%.

Currently, the district tax rates vary from 0.10 to 1%. The combined state, local, and district tax rates range from 7.625 to 9.5% (with the exception of Los Angeles County). A listing of the district taxes, rates, and effective dates is available on the BOE's website: www.boe.ca.gov/sutax/pdf/districtratelist.pdf.

COMMENTS

1. Sponsor and Purpose. This bill is co-sponsored by the Center for Sustainable Neighborhoods, Non-Profit Housing Association of Northern California, Greenbelt Alliance, and Transform to provide MPOs with additional funding options to achieve their SCS's adopted goals. According to the author's office, local governments, including transportation agencies and park districts, currently struggle to fund transportation and natural resources projects as set forth in SB 375 (Steinberg, Ch.728, Stats. 2008). Moreover, with the loss of redevelopment agencies, cities and counties have few financing tools to build affordable housing in their communities.

2. Authority to impose a district tax. The bill authorizes a transportation planning agency designated as an MPO under federal law to levy a district tax. However, the bill does not define a "transportation planning agency." The California Department of Transportation website provides information on MPOs and regional transportation planning agencies. According to its [website](#), there are 18 federally designated MPOs and 26 state statutorily created Regional Transportation Planning Agencies (RTPAs) in California. State designated RTPAs, including transportation planning agencies, are described under GC Sections 29532 et seq.

The bill should clarify which transportation planning agencies are authorized to levy a district tax. BOE staff can help draft appropriate amendments.

3. Adhering to county boundaries would ease administration. The bill provides that an MPO transportation planning agency may levy a district tax within all or a portion of its jurisdiction. A multi-county transportation planning agency may elect to exclude one or more counties from the district tax ordinance. According to the author's office, the intent is to allow one or more counties within a MPO to opt out of the ordinance. If a county chose to opt out, the entire county would opt out rather than just a portion of the county. However, current language allows for excluding *portions* of a county. A district tax imposed along partial county lines is problematic to administer.

Currently, the BOE administers a total of 169 district taxes for which all have boundaries equal to their respective city and county lines. Without having defined city or county limits, tax administration and collection would be extremely difficult. In processing returns, audits, and payments, the BOE assigns a specific code to properly identify accounts within a district. As long as a tax is imposed within city or county limits, the BOE can electronically identify accounts within these areas.

If this bill allows for imposition of tax along partial county lines, the BOE would have to manually identify accounts and addresses falling within the MPO's boundaries. It

is recommended that the provisions be amended to restrict the tax district boundaries to the entirety of the participating county or counties within the MPO.

4. **The tax would not be subject to the 2% rate cap.** Existing law provides that the combined rate of all district taxes imposed in any county cannot exceed 2%. This bill provides a specific exclusion.
5. **Administrative and technical concerns.** Several administrative and technical issues must be addressed before the bill becomes law. As always, BOE staff can provide assistance.
 - **Operative date.** RTC Section 7265 provides that an ordinance becomes operative on the first day of a calendar quarter commencing more than 110 days after the adoption of the ordinance. For MPO-designated transportation planning agencies that include up to two counties, the BOE anticipates being able to implement an ordinance within the 110-day timeframe. However, for a larger MPO, the 110-days may not provide sufficient implementation time. Depending on the size of a larger MPO, the BOE may need 150 days to 180 days to implement. A stratified operative date is recommended, depending on the size of the MPO.
 - **Preparatory Costs.** Preparatory costs include costs to develop procedures, perform programming, develop and adopt regulations, design and print forms, update publications and returns, and develop instructions for BOE staff and taxpayers, and any other necessary preparatory costs. The Transactions and Use Tax Law limits these district costs to \$175,000.

For a two-county MPO transportation planning agency, we anticipate the costs to implement a new district tax would be less than the \$175,000 limit. In April 2009, the Sonoma Marin Area Rail Transportation Authority's implementation costs were under \$175,000. However, we estimate a multiple county MPO would exceed the \$175,000 limit. We have not yet estimated the maximum amount sufficient to implement a larger MPO ordinance.

The noted administrative concerns are based on the assumption that the tax will be imposed within the entire county. As stated in Comment 3, a tax imposed along a partial county boundary is problematic to administer, especially within the 110-day timeframe. Were an MPO to cover only a portion of a county, we would have to manually identify the taxpayer accounts and addresses. Consequently, implementation costs may well exceed the \$175,000 limit.

6. Related legislation.

- AB 210 (Wieckowski) extends Alameda County authority, and authorizes Contra Costa County, to exceed the existing 2% rate limitation, under specific circumstances.
- SB 1 (Steinberg) authorizes a Sustainable Communities Investment Area to establish a Sustainable Communities Investment Authority that imposes a district tax within that area.

COST ESTIMATE

This bill does not increase BOE's administrative costs because it only authorizes an MPO to impose a tax. Voter approval would be required before any tax is levied pursuant to these provisions.

If a district tax was enacted, the agency would be required to contract with, and reimburse the BOE for all tax administration-related functions, pursuant to the Transactions and Use Tax Law. Tax preparation and administration costs could be higher than other BOE-administered district taxes because the proposed tax is unique.

Preparatory costs. Based on the BOE's experience with city- and county-imposed taxes, one-time preparatory costs typically range from \$12,000 to \$138,000. The costs include updating publications and returns, performing data processing, programming, developing instructions for both BOE staff and taxpayers, and notifying taxpayers. The need to mail special notices in and among cities and counties with a large number of seller's permits can substantially impact the BOE's mailing costs.

In addition, the preparatory costs can vary depending on the number of new district taxes being implemented simultaneously. For example, the cost of updating a publication and return to add four new taxes is similar to the cost to add one new tax. Moreover, those costs would be shared among four new districts instead of just one district. Thus, depending on the number of district taxes implemented at the same time, the preparatory costs can vary.

On-going administrative costs. For perspective, the BOE's estimated fiscal year 2012-13 administrative costs assessed to the existing city and county special taxing jurisdictions range from \$500 to \$2,715,000. The exceptions are Los Angeles County (which has higher administrative costs due to a substantially higher number of seller's permits) and the Bay Area Rapid Transit District (BART) (which covers three counties). The BART was the first state-administered district sales and use tax and became operative April 1, 1970. For the fiscal year 2012-13, the BOE's combined estimated costs to administer the BART tax are \$2,893,000.

REVENUE ESTIMATE

This bill does not include a specific tax area. Accordingly, a revenue estimate will not be prepared.

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